

HARWARD

JESUS RODRIGUEZ  
ASSISTANT DISTRICT ATTORNEY

OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS  
DISTRICT ATTORNEY

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November 1, 2004

Adolfo Gonzales  
Chief of Police  
National City Police Department  
1200 National City Boulevard  
National City, CA 91950

RE: Non-fatal shooting of [REDACTED] on March 11, 2004, by National City  
Police Officers Daniel Harward and Chris Miller; NCPD Case # 0402679; DA Special  
Operations Case # 04-045PS; Deputy District Attorney assigned: A. Craig Rooten

Dear Chief Gonzales:

We have reviewed the reports and other materials compiled by your department concerning the  
non-fatal shooting of [REDACTED] by the above-named officers on March 11, 2004. A  
District Attorney Investigator responded to the scene soon after the incident and was briefed by  
your investigators.

***Persons Involved***

Richard Ortiz, age 22, was an "Iris Street" gang member, on probation for auto theft, and the  
driver of the stolen vehicle involved in the incident.

[REDACTED] age [REDACTED] was a passenger in the vehicle.

Officer Chris Miller was assigned as a patrol officer.

Officer Daniel Harward was assigned as a School Liaison Officer.

***Background***

The reports indicate that at about 10:30 p.m. on March 10, [REDACTED] drove his 1986 [REDACTED]  
[REDACTED] to a residence in the 900 block of East 28th Street. While there, Mr. [REDACTED] became  
involved in an argument with two acquaintances—one of them was Richard Ortiz. Mr. [REDACTED]  
said Mr. Ortiz took his car keys, watch and cigarettes, at knife point, and left in his [REDACTED]  
[REDACTED] Mr. [REDACTED] said he saw his car later that evening at East 24th Street and Highland Avenue  
and Mr. Ortiz was still driving it. Mr. Ortiz refused to return the vehicle and drove away. The  
next morning Mr. [REDACTED] called your department and reported his car stolen.

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At about 10:30 a.m., before the stolen vehicle report was taken, officers located the car illegally parked in the west alley of the 1900 block of Wilson Avenue. The officers contacted Mr. Ortiz and two others who were in the vehicle, and they requested that the vehicle be properly parked. After checking to see if the car had been reported stolen, the officers left.

At about 11:00 a.m. the license plate number of the stolen vehicle was given to your dispatcher, who noted the number, was the same as the illegally parked vehicle's, and officers began searching for the car.

Officer Harward located the [REDACTED] in a parking lot at 620 East 24th Street and requested that Officer Miller assist him in checking on the vehicle. At about the same time, Mr. [REDACTED] who was riding a bicycle in the parking lot, saw his car. Mr. [REDACTED] approached and asked Mr. [REDACTED] who was sitting in the front passenger seat, where Mr. Ortiz was. Mr. [REDACTED] told him Mr. Ortiz was inside the apartment complex. Mr. [REDACTED] rode a short distance and saw the officers approaching on foot. Mr. [REDACTED] rode his bike back into the lot and saw Mr. Ortiz entering the vehicle. Mr. [REDACTED] yelled at Mr. Ortiz to leave the keys and the car, but Mr. Ortiz said "no" and started the motor, backing out of the parking stall and driving directly at Mr. [REDACTED]. Mr. [REDACTED] moved behind a parked car to avoid being hit.

Mr. Ortiz then drove the car directly at the officers. Officer Harward extended his hand and repeatedly ordered Mr. Ortiz to stop, but the vehicle continued toward the officers.

#### *Shooting Incident*

As the [REDACTED] sped toward the officers, Officer Harward saw Mr. Ortiz look directly at him, accelerate, and continue directly toward him and Officer Miller. The [REDACTED] did not slow down, and when the officers moved, Mr. Ortiz turned the car toward them. Officer Harward said he believed Mr. Ortiz was intentionally driving at him and Officer Miller, so he fired two rounds at the car as he attempted to move out of the way. Officer Miller also fired, thinking Mr. Ortiz was trying to hit them. He thought the vehicle had actually struck Officer Harward as it passed. Mr. [REDACTED] said he believed Mr. Ortiz was trying to run the officers down.

The [REDACTED] fled and was involved in a traffic accident at the intersection of East 28th Street and F Avenue. Mr. Ortiz was captured near the scene of the accident. Officer Harward located Mr. [REDACTED] the front passenger, and the other passenger, Maria Urzua, sitting on the curb. Mr. [REDACTED] had been shot in the left leg and back. Ms. Urzua said when Mr. Ortiz saw the officers he panicked and drove straight at them at a high rate of speed, trying to intimidate them.

#### *Additional Investigation*

The [REDACTED] of the apartment complex was seated in her car in the parking lot during the incident. She said the [REDACTED] drove directly at the officers at a high rate of speed. She told a detective the officers would have been hit if they had not shot at the vehicle and caused it to veer to the left.

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Examination of the physical evidence revealed that Officer Harward fired his gun twice and Officer Miller fired seven times. There were six bullet impacts on the vehicle

A toxicological examination revealed the presence of methamphetamine in Mr. Ortiz's system.

#### **Legal Analysis**

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist his effort to effect an arrest because of that person's resistance.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9<sup>th</sup> Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

"[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation.'" [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense and defense of others is available to any person.

#### **Conclusions**

In this case, Officers Harward and Miller were confronted by a speeding vehicle bearing down on them in an attempt to escape. According to the officers and witnesses, including one witness inside the car, the car was headed directly at the officers at a high rate of speed, and only veered away from the officers as a result of their defending themselves by firing at the vehicle. While it is unfortunate that Mr. [REDACTED] a passenger, was wounded in this incident, the decision by the

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officers to fire at the vehicle was reasonable under the circumstances, and their use of deadly force was justified. The fact that Mr. [REDACTED] rather than Mr. Ortiz, was wounded, does not change our assessment that the conduct of the officers was appropriate under the circumstances. The officers bear no criminal liability for their actions.

We anticipate no further action in this matter other than the continuing prosecution of Mr. Ortiz. A copy of this letter, along with the materials submitted for our review, will be retained in our files.

Sincerely,

BONNIE M. DUMANIS  
District Attorney

By:

  
JULIE KORSMEYER  
Deputy District Attorney  
Chief, Special Operations Division

JK:jb

# National City Police Department

## ADMINISTRATIVE INVESTIGATION TRACKING FORM

|  |  |  |           |
|--|--|--|-----------|
| Complainant Name: <u>DIS</u>                         |  |  |           |
| Officer / Employee Involved: <u>HARWARD - MILLER</u> |  |  |           |
| Complaint Taken By:                                  | <u>WAP: 1 1 2004</u>                                     | Date Logged in IA:                                 | By: _____ |
| IA Case# <u>04IA-003</u>                             | Retain & Investigate <input checked="" type="checkbox"/> | Return for Command Invest <input type="checkbox"/> |           |

### CLASS 1 TRACKING

(to be completed when the case is investigated by Internal Affairs)

|  |   |
|--|---|
| Investigation Completed By: <u>SGT. KING</u>               | Date Completed: <u>10.14.04</u>   |
| Approved Content by IA Lt: <u>R.S. OOB</u>                 | Date Approved: <u>10.18.04</u>  |
| Reviewed by Admin. Capt: <u>M. RODRIGUEZ</u>               | Date Approved: <u>03-27-06</u>  |
| <u>TRAINING AREA - VEHICLES</u><br>Investigator's Finding: | SUS <input type="checkbox"/> NOT SUS <input type="checkbox"/> EXON <input checked="" type="checkbox"/> UNF <input type="checkbox"/> |
| To Command Lt: <u>ALLEN</u>                                | Date to Command Lt: <u>10.18.04</u>   |
| Recommendation by Command Lt: <u>EXONERATED</u>            | Date to Chief: <u>3/30/06</u>   |

### CLASS 2 TRACKING

(to be completed when case is investigated by employee's command)

|   |  |
|---|--|
| Date to IA for Case#:                         | Date Received by IA:   |
| Returned To (Command):                        | Date Returned to Command:  |
| Supervisor or Investigator's Finding:         | SUS <input type="checkbox"/> NOT SUS <input type="checkbox"/> EXON <input type="checkbox"/> UNF <input type="checkbox"/> |
| Recommendation by Supervisor or Investigator: |  |
|   |  |
| Watch Commander or Lt's Finding:              | SUS <input type="checkbox"/> NOT SUS <input type="checkbox"/> EXON <input type="checkbox"/> UNF <input type="checkbox"/> |
| Disposition by Watch Commander or Lt:         |  |
|   |  |

### CHIEF'S DISPOSITION

|   |   |                                |
|---|---|--------------------------------|
| <u>Atty.</u> Routed to <u>Skip Bicarano</u> , Chief of Police                       |   | Date Received: <u>03-30-06</u> |
| Appeal Hearing: <u>N/A</u> YES <input type="checkbox"/> NO <input type="checkbox"/> | Command Disposition Upheld: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> |                                |
| Final Disposition of Chief of Police:   | Verbal Admon  | Written Admon                  |
| <small>(To be completed only if Command Dispo. not upheld)</small>                  | Suspension (Length):  | Termination                    |
| Other:  |   |                                |

|   |                               |
|---|-------------------------------|
| Returned to IA for File By: <u>CAPT. KNIGHT</u> | Date Returned: <u>3/30/06</u> |
| Disposition Notification By: _____              | Date Notified: _____          |
| Employee Review By: _____                       | Date Reviewed: _____          |

October 14, 2004

To: Chief Aldolfo Gonzales  
From: Sergeant Michael J. King  
Subject: Internal Affairs Investigation #03IA003

DATE AND TIME OF OCCURRENCE:

March 11, 2003/1224 hours

OFFICER INVESTIGATED:

Officer Christopher Miller  
Officer Daniel Harward

SYNOPSIS:

On March 11, 2004, at about 1224 hours, Officers Harward and Miller were investigating the report of a carjacked vehicle at the apartment complex located at 631 E. 28<sup>th</sup> Street. The victim of the carjacking told the officers that the stolen vehicle was parked in the rear (south) parking lot of the complex.

Officers Harward and Miller walked into the parking lot at the west entrance from F Avenue. As they walked in an easterly direction in the parking lot, they saw the suspect vehicle being backed quickly southbound out of a parking stall in the north portion of the lot. The driver of the stolen car swiftly turned in a westerly direction and accelerated westbound directly at Officers Harward and Miller.

The officers attempted to move to the north, but, according to the officers and witnesses, the vehicle accelerated so quickly and at such a high rate of speed that the officers were forced to fire their service pistols toward the driver of the vehicle. A combination of the evading movements of the officers and the firing of their weapons saved them from being struck by the car.

As the rounds from the service pistols of both of the officers struck the vehicle, the car veered somewhat to the southwest and sped past the officers to the south, almost striking Officer Harward. When the car was proceeding past the officers, Officer Miller fired additional rounds in an attempt to stop the fleeing vehicle from proceeding further because of the excessive force and atrociousness of the driver's actions seconds earlier. The vehicle was able to speed southbound on F Avenue.

The car was being driven so fast and erratically that the suspect vehicle collided with another car, which was stopped on F Avenue near Sweetwater Union High School, about 300 yards south of the shooting incident. Other officers apprehended the driver and two passengers at or near the collision site. One of the passengers was struck in leg by one of the rounds fired by the officers.

LOCATION OF INCIDENT:

631 E. 28<sup>th</sup> Street

DEPARTMENT POLICY APPLICABLE:

Operating Procedure #52 - Use of Force, states (in part) reasonable force may be applied consistent with California Penal Code section 835a. Officers shall not use more force in any situation than is necessary to effect lawful objectives and is appropriate under the circumstances.

Deadly force against any person, including a fleeing felon, may only be used when an officer reasonably believes that the action is necessary as a means of self defense from death or serious injury; to defend any other victim from death or serious injury; to prevent a crime in which human life is in serious jeopardy as a result of a suspect's actions; to apprehend a fleeing felon if the felony is a forcible and atrocious one which threatens death or serious injury.

INVESTIGATION:

Detective Taylor and I were called out to the scene on March 11, 2004. Detective Sergeant Triviz briefed us. I reviewed the parking lot shooting scene at 631 E. 28<sup>th</sup> Street and the area of the vehicle collision, located at the intersection of F Avenue and E. 28<sup>th</sup> Street. Detectives and traffic investigators processed both scenes completely. Each investigator submitted thorough, written reports detailing their actions and observations. Detectives located and comprehensively interviewed witnesses.

The victim of the carjacking, [REDACTED] and the apartment complex [REDACTED] [REDACTED] [REDACTED] [REDACTED] witnessed the entire incident involving the shooting in the parking lot. [REDACTED] and [REDACTED] gave detailed statements, which verified that the driver of the suspect vehicle, Richard Ortiz, absolutely tried to run down both officers. Both witnesses felt the officers were completely justified in firing at the suspect vehicle.

[REDACTED] said, "They (the officers) didn't have time to react to get out of the way. It would have hit'em straight on if they hadn't fired." In the crime report [REDACTED] told Detective Nagle that the officers pulled their guns as Richard Ortiz was driving directly at them. [REDACTED] saw both officers trying to get out of the way of the suspect vehicle, but Ortiz was still driving at them at high speed. Both officers fired at Ortiz as he drove directly at them.

Maria Urzua, one of the passengers in the suspect vehicle stated, "Richard (Ortiz) began panicking. The police started walking up the driveway, and he didn't care if the cops were there. He wanted the cops out of the way. There were cops in front of us." Richard Ortiz and the other passenger, [REDACTED], invoked their Miranda rights when asked by detectives to provide a statement.

Officers Miller and Harward gave voluntary statements to Detectives Grande and Remmers. The officer's statements to the detectives are thorough and specific in the articulation of their reasonable fear

for their own safety. They also feared for the safety of each other as Ortiz tried to run them down. Both officers fired several rounds at the suspect vehicle as the vehicle came at them.

Officer Miller fired additional rounds at Ortiz as the vehicle veered closely past them and one final round as the vehicle sped southbound on F Avenue. Officer Miller fired the rounds at the fleeing vehicle because he was very concerned the suspect vehicle would get away. Officer Miller obviously realized the atrociousness of the attempt by Ortiz to run over both officers. Officer Miller undoubtedly did not want the public to be subjected to possible serious injury from Ortiz during his escape.

The crime report (#0402679) regarding this officer involved shooting is very comprehensive and gives specific detail to the crime scenes and the circumstances of the case. The statements of all the persons involved are adequately depicted. I did not find it prudent to interview either Officers Miller and Harward or any of the witnesses in the case.

The case against Ortiz was submitted to the District Attorney's Office. Ortiz pled guilty to 211 P.C. Robbery, 245 (c), Assault with a Deadly Weapon, and 10851 V.C. Vehicle Theft.

#### FINDING:

Officers Miller and Harward were in full uniform when they approached the carjacked suspect vehicle on March 11, 2003. David Ortiz attempted to run down both officers in order to escape arrest. Both officers tried to move out of the path of the suspect vehicle, but Ortiz was intent on striking the officers. Ortiz did not veer away from the officers until after the officers opened fire to protect themselves from death or serious bodily injury.

Officer Miller fired additional rounds at Ortiz after Officer Miller and Officer Harward were out of danger from being run over by the vehicle. Officer Miller fired the rounds to stop an obvious fleeing, atrocious felon from escaping. Officer Miller was undoubtedly concerned for the safety of the public should Ortiz escape.

Officer Miller's obvious fears for public safety were true. Within a few seconds Ortiz drove the vehicle into another car, which was stopped near the intersection of F Avenue and E. 28<sup>th</sup> Street to drop off a female. This female was injured as a result of the collision. Additionally, Ortiz fled the scene of the accident, but was apprehended a short time later by several officers. The officers found him hiding in the yard of a nearby residence.

Based on the information from the extensive crime report regarding this officer involved shooting, Officers Miller and Harward are exonerated from any violation of NCPD operation Procedure #52.

#### CONCLUSION:

Officer Miller is exonerated with regards to any violation of NCPD Operating Procedure #52 in this case.



( Officer Harward is exonerated with regards to any violation of NCPD  
Operating Procedure #52 in this case.

R.S. Allen, LT.  
10.18.04



0471A003

**National City  
Police Department**

**PRESS RELEASE**

**Date/Time:** March 11, 2004/ 1149 hours

**Type of Incident:** Officer Involved Shooting

**Location of Occurrence:** 624 E. 24<sup>th</sup> Street, South Parking Lot

**Victim(s):** [REDACTED] (Victim of Carjacking) Age: [REDACTED]  
[REDACTED] (Accident Victim) Age: [REDACTED]

**NOTE:** SUSPECT'S NAME NOT FOR NEWS RELEASE IF IT POSSIBLY HINDERS INVESTIGATION.

**suspect(s):** Richard Ortiz Age / DOB: 101281  
[REDACTED] Age / DOB: [REDACTED]  
Maria Urzua Age / DOB: 122460

**RESUME OF INCIDENT (Not including "quotation" of suspects, etc.)**

The National City Police Department received a report of an armed carjacking of a 1986 [REDACTED] on the night of March 10, 2004, from [REDACTED] East 28<sup>th</sup> Street in National City. On the morning of March 11, 2004, a civilian Community Service Officer of the police department saw the vehicle in the area of 1800 Wilson Avenue in National City. The vehicle was occupied by three suspects, two males and a possible female passenger. Officers were dispatched to the location however the vehicle left the area before patrol units arrived.

At about 1149 hours, two National City Police Officers located the vehicle in the south parking lot of an apartment complex located at 620 East 24<sup>th</sup> Street. The vehicle was seen pulling out of a parking space and occupied by three suspects, two males and one female. The vehicle quickly accelerated forward to a high rate of speed and drove directly at the two officers. The officers having been placed in a position that threatened their safety fired multiple shots at the vehicle as it sped toward them. The suspect vehicle then exited the lot and sped off, south on "F" Avenue and subsequently collided with another uninvolved vehicle about two blocks away at the intersection of "F" Avenue and East 28<sup>th</sup> Street, north of Sweetwater High School. The driver (Ortiz) of the suspect vehicle fled the scene of the collision and was found minutes later hiding in the shrubs along the side of a nearby residence (631 East 28<sup>th</sup> Street). He was taken into custody without further incident. The remaining two suspects, [REDACTED] and Maria Urzua were passengers and remained at the scene of the collision and were taken into custody. As a result

of the collision, the suspect vehicle and the uninvolved vehicle, a 1981 [REDACTED] sustained major damage. A passenger of the [REDACTED], a student at Sweetwater High School complained of pain as a result of the collision and was taken by paramedics to Paradise Valley Hospital. [REDACTED] was being dropped off at school by her step-father when the collision occurred.

[REDACTED] sustained two gunshot wounds; he was transported by paramedics to UCSD Hospital. Maria Urzua complained of pain as a result of the collision and was transported to UCSD Hospital.

Potential booking charges for all three suspects may range from Carjacking, Assault with a Deadly Weapon, to the Attempted Murder of a Police Officer. The investigation is ongoing.

The two National City Police Officers were not injured during the incident and will be placed on Administrative Leave with pay per our agency's policy. The criminal investigation of the incident is being handled by homicide detectives of the National City Police Department. The administrative investigation will be handled by the Department's Internal Affairs Unit.

During the incident, Sweetwater High School, 2900 Highland Avenue, and Olivewood Elementary, 2505 "F" Avenue, were placed under lockdown conditions while officers searched for the outstanding suspect.

Contact Person(s): Jose Tellez, Sergeant  
Public Information Officer

Phone No.: (619) 336-4423  
Pager: (619) 896-3690